

EXHIBIT “D”

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

WHITESTONE CONSTRUCTION CORP.,)
)
Plaintiff,)
)
v.)
)
YUANDA USA CORPORATION,)
)
Defendant.)

No. 20 - cv - 1006

**DEFENDANT YUANDA USA CORPORATION'S FIRST AMENDED ANSWER TO
PLAINTIFF WHITESTONE CONSTRUCTION CORP.'S COMPLAINT**

Defendant Yuanda USA Corporation ("Yuanda"), by and through its counsel, The Law Offices of Peter Scutero, P.C. and Fox Swibel Levin & Carroll, LLP, in accordance with the Court's December 21, 2020 Order, files this Amended Answer to include Defendant's Affirmative Defenses of Failure of Condition Precedent:

FIRST AFFIRMATIVE DEFENSE: FAILURE OF CONDITIONS PRECEDENT

1. The Purchase Order on which Whitestone Construction Corp.'s ("Whitestone") claims are based, attached as Exhibit A to Whitestone's Complaint, contains certain conditions precedent.

2. Pursuant to Section 10 of the Purchase Agreement Terms and Conditions, before Yuanda is obligated or required to "replace or correct" any of its work, Whitestone must find or otherwise determine that Yuanda's work actually failed to conform to the requirements of the Purchase Order and/or Contract Documents.

3. Pursuant to Section 10 of the Purchase Agreement Terms and Conditions before Yuanda is obligated or required to "replace or correct" any of its work, Whitestone, must reject



Yuanda's work as failing to conform to the requirements of the Purchase Order and/or Contract Documents.

4. Yuanda's work complies conforms to the requirements of the Purchase Order and/or Contract Documents.

5. Whitestone has not informed Yuanda that Whitestone rejects or has rejected Yuanda's work for failing to conform to the requirements of the Purchase order and/or Contract Documents

6. Whitestone agrees that Yuanda's work conformed to the requirements of the Purchase Order and/or Contract Documents.

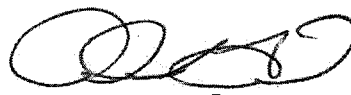
7. Whitestone has failed to satisfy the conditions precedent, as stated in the Purchase Agreement Terms and Conditions, which would allow Whitestone to recover the damages it seeks.

8. Because Yuanda's work actually conforms to the requirements of the Purchase Order and/or Contract Documents, Whitestone cannot satisfy a necessary condition precedent and its claim therefore fails.

9. Because Whitestone never rejected Yuanda's work, Whitestone cannot satisfy a necessary condition precedent and its claim therefore fails.

WHEREFORE, Yuanda requests that this court enter judgment in Yuanda's favor and award any such further relief that is equitable and just.

By: _____



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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on January 7, 2021, he caused the foregoing to be electronically served upon the following counsel of record:

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